

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

WP(C).No. 28452 of 2006(K)

PETITIONER:

**JOMON JOSEPH, FL-3 LICENSEE,
HOTEL ZODIAC INTERNATIONAL, KADUTHURUTHY,
KOTTAYAM DISTRICT.**

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY
THE DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT BUILDING, ERNAKULAM.**
- 2. THE SUB INSPECTOR OF POLICE,
KADUTHURUTHY, KOTTAYAM DISTRICT.**

BY GOVT.PLEADER SRI. GIKKU JACOB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2006,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

Petitioner's Exhibits

Ext. True copy of the F.I.R. No.106/2006 dated 1-4-2006 filed before the Judicial First Class Magistrate Court, Vaikom

Ext.P2 : True copy of the Mahazar prepared on 1-4-2006

Ext.P3 True copy of the Mahazar prepared on 2-4--2006

Ext.P4. True copy of the final report filed before the Judicial First Class Magistrate Court Vaikom

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R.BASANT.J

W.P.(C) No. 28452 OF 2006

Dated this the 11th day of December 2006

JUDGMENT

Petitioner is the first accused in a prosecution under Section 56 (b) of the Kerala Abkari Act. The crux of the allegations against the petitioner and his Manager and the Salesman (altogether there are three accused persons) in the final report filed by the Police is that contrary to the stipulations in the license, the licensee (the first accused) through his Manager (the second accused)and the Salesman (the third accused) effected sale of liquor on a date on which no sale of liquor was to take place in accordance with the terms of the license issued.

2. The prosecution alleged that on receipt of prior information that such sale was going on in the shop of which the petitioner is the licensee, the detecting officer reached the scene and he found that actual sale taking place in the shop. The person who purchased was intercepted. The Salesman was apprehended from the shop. The Manager allegedly took to his heels. There is no specific case that petitioner/licensee was actually present in the shop.

3. The learned counsel for the petitioner contends that there is no allegations of any constructive liability under Section 34 of the I.P.C. It is further alleged that there is not even an allegation that the petitioner was personally present. In these circumstances even if the alleged sale had taken place the petitioner cannot be made liable for the offence under Section 56 (b), it is contended.

4. Under Section 56 (b) whoever being the holder of a license or permit granted under this Act or being the employee of such person and acting on his behalf willfully does or omits to do anything in breach of the conditions of his license or permit not otherwise provided in the Act shall on conviction before a Magistrate be punishable with imprisonment and fine.

5. Doing of acts and omission to perform acts are made punishable. A licensee is expected to ensure that no sale of a liquor takes place in his shop on what is called a dry day. If sale takes place in such shop on such day the mere absence of the licensee in the premises cannot, according to me, entitle the licensee to claim quashing of proceedings against him. I shall scrupulously not make any observations on merits. But

suffice it to say I am not persuaded to agree in the facts and circumstances of this case that on allegations raised, no further steps for the prosecution of the petitioner is liable to be taken. I am satisfied that the proceedings are not liable to be quashed for that reason.

6. This Writ petition does in these circumstances fail, as I do not find any reason to invoke the powers under Section 482 of the Cr.P.C or the Constitutional jurisdiction under Article 226/227. This Writ petition is accordingly dismissed. But I may however hasten to observe that the dismissal of this Writ Petition shall not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions in the course of the trial.

R.BASANT, JUDGE

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